



This document is scheduled to be published in the Federal Register on 09/03/2014 and available online at <http://federalregister.gov/a/2014-20791>, and on FDsys.gov

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2013-0823; FRL-9915-85-Region 9]

Approval of Air Quality Implementation Plan Revisions; State of California; South Coast

VMT Emissions Offset Demonstrations

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a state implementation plan revision submitted by the State of California to meet the vehicle miles traveled emissions offset requirement under the Clean Air Act for the 1-hour ozone and 1997 8-hour ozone national ambient air quality standards in the Los Angeles–South Coast Air Basin (“South Coast”). The EPA is approving this revision because it demonstrates that California has put in place specific enforceable transportation control strategies and transportation control measures to offset the growth in emissions from the growth in vehicle miles traveled and vehicle trips in the South Coast, and thereby meets the applicable requirements of the Clean Air Act.

DATES: This final rule is effective on **[Insert date 30 days from the date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action: Docket ID No. EPA–R09–OAR–2013–0823. Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material,

large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3963, ungvarsky.john@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Summary of Proposed Action

On May 23, 2014 (79 FR 29705), under section 110(k) of the Clean Air Act (Act or CAA), the EPA proposed approval of a submittal dated February 13, 2013 from the California Air Resources Board (CARB) of a revision to the California state implementation plan (SIP) for the South Coast. The SIP revision includes demonstrations intended to show compliance with the vehicle-miles-traveled emissions offset element of CAA section 182(d)(1)(A). The following

paragraphs summarize the regulatory background, CARB's submittal, and the EPA's rationale for proposing approval. For additional details concerning these topics, please see our May 23, 2014 proposed rule.

A. Regulatory Background

The specific CAA requirement that is relevant for the purposes of this action is section 182(d)(1)(A), which applies in ozone nonattainment areas classified as "Severe" or "Extreme," and, in relevant part, requires the state, if subject to its requirements, to "submit a [SIP] revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area."¹ Herein, we use "VMT" to refer to vehicle miles traveled or vehicle trips, and refer to the related SIP requirement as the "VMT emissions offset requirement." In addition, we refer to the SIP revision intended to demonstrate compliance with the VMT emissions offset requirement as the "VMT emissions offset demonstration."

The South Coast² is an "Extreme" ozone nonattainment area for both the revoked 1-hour ozone national ambient air quality standard (standard or NAAQS) and the 1997 8-hour ozone standard, and thus, the State of California is required to submit SIP revisions that include VMT emissions offset demonstrations for the South Coast for both ozone standards.

In 2008, to comply with the VMT emissions offset requirement for the 1-hour ozone standard, the South Coast Air Quality Management District (SCAQMD) submitted a

¹ CAA section 182(d)(1)(A) includes three separate elements. This final action relates only to the first element of CAA section 182(d)(1)(A) (i.e., the VMT emissions offset requirement).

² The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. The South Coast is home to approximately 17 million people, has a diverse economic base, and contains one of the highest-volume port areas in the world. For a precise description of the geographic boundaries of the South Coast, please see 40 CFR 81.305.

demonstration showing decreases in aggregate year-over-year motor vehicle emissions in the South Coast from a base year (1990) through the applicable attainment year (2010). The following year, the EPA approved the South Coast 1-hour ozone VMT emissions offset demonstration as meeting the VMT emissions offset requirement of CAA section 182(d)(1)(A). See 74 FR 10176 (March 10, 2009). The EPA also approved the South Coast VMT emissions offset demonstration submitted in connection with the area's "Extreme" classification for the 1997 8-hour ozone standard. See 77 FR 12674 (March 1, 2012). Once again, the approved demonstration showed decreases in aggregate year-over-year motor vehicle emissions in the South Coast from a base year through the applicable attainment year.

In approving the South Coast VMT emissions offset demonstrations in 2009 and 2012, the EPA applied its then-longstanding interpretation of the VMT emissions offset requirement, first explained in guidance in the General Preamble to Title I of the Clean Air Act (see 57 FR 13498, at 13521-13523, April 16, 1992), that no transportation control measures are necessary if aggregate motor vehicle emissions are projected to decline each year from the base year of the plan to the attainment year. See 74 FR 10176, at 10179-10180 (March 10, 2009); 76 FR 57872, at 57889 (September 16, 2011). However, in response to a legal challenge brought in the U.S. Court of Appeals for the Ninth Circuit, the Court ruled against the EPA's approval of the South Coast VMT emissions offset demonstration for the 1-hour ozone standard, determining that the EPA incorrectly interpreted the statutory phrase "growth in emissions" in section 182(d)(1)(A) as meaning a growth in "aggregate motor vehicle emissions" versus a growth solely from VMT. Essentially, the Court ruled that additional transportation control measures are required whenever vehicle emissions are projected to be higher than they would have been had VMT not increased,

even when aggregate vehicle emissions are actually decreasing. However, the Court acknowledged that “clean car technology” advances could result in there being no increase in emissions even in the face of VMT growth, which would then allow VMT to increase without triggering the requirement to adopt offsetting transportation control measures. *Association of Irrigated Residents v. EPA*, 632 F.3d 584, at 596-597 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012.

Based on this reasoning, the Court remanded the approval of the South Coast VMT emissions offset demonstration for the 1-hour ozone standard back to the EPA for further proceedings consistent with the opinion. In response, we withdrew our approval of the South Coast VMT emissions offset demonstration for the 1-hour ozone standard and disapproved it. See 78 FR 18849 (March 28, 2013). Furthermore, because our approval of the South Coast VMT emissions offset demonstration for the 1997 8-hour ozone standard was predicated on the same rationale as the corresponding South Coast demonstration for the 1-hour ozone standard that was rejected by the Ninth Circuit, we withdrew our approval of the South Coast VMT emissions offset demonstration for the 1997 8-hour ozone standard and disapproved it as well. *Id.* Our disapproval of the previous South Coast VMT emissions offset demonstrations triggered sanctions clocks under CAA section 179(a) that would lead to sanctions within a certain period of time unless California submitted, and the EPA approved, SIP revisions that addressed the deficiency upon which the disapproval was based.

In the wake of the decision in the *Association of Irrigated Residents* case cited above, and in addition to withdrawing our approval of the previous South Coast VMT emissions offset demonstrations and disapproving the same, the EPA issued a guidance document, *Guidance on*

Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled (herein referred to as the “August 2012 guidance”), which includes a revised methodology for states to use in their VMT emissions offset demonstrations.³ The guidance discusses the meaning of the terms, “transportation control strategies” (TCSs) and “transportation control measures” (TCMs), and recommends that both TCSs and TCMs be included in the calculations made for the purpose of determining the degree to which any hypothetical growth in emissions due to growth in VMT should be offset. Generally, TCSs is a broad term that encompasses many types of controls including, for example, motor vehicle emission limitations, inspection and maintenance (I/M) programs, alternative fuel programs, other technology-based measures, and TCMs, that would fit within the regulatory definition of “control strategy.” See, e.g., 40 CFR 51.100(n). TCMs are defined at 40 CFR 51.100(r) as meaning “any measure that is directed toward reducing emissions of air pollutants from transportation sources. Such measures include, but are not limited to those listed in section 108(f) of the Clean Air Act[.],” and generally refer to programs intended to reduce the VMT, the number of vehicle trips, or traffic congestion, such as programs for improved public transit, designation of certain lanes for passenger buses and high-occupancy vehicles (HOVs), trip reduction ordinances, and similar programs.

The August 2012 guidance explains how states may demonstrate that the VMT emissions offset requirement is satisfied in conformance with the Court’s ruling. States are recommended

³ Memorandum from Karl Simon, Director, Transportation and Climate Division, Office of Transportation and Air Quality, to Carl Edland, Director, Multimedia Planning and Permitting Division, EPA Region 6, and Deborah Jordan, Director, Air Division, EPA Region 9, August 30, 2012.

to estimate emissions for the nonattainment area's base year and the attainment year. One emission inventory is developed for the base year, and three different emissions inventory scenarios are developed for the attainment year. For the attainment year, the state would present three emissions estimates, two of which would represent hypothetical emissions scenarios that would provide the basis to identify the "growth in emissions" due solely to the growth in VMT, and one that would represent projected actual motor vehicle emissions after fully accounting for projected VMT growth and offsetting emissions reductions obtained by all creditable TCSs and TCMs. See the August 2012 guidance for specific details on how states might conduct the calculations.

B. CARB's Submittal

On February 13, 2013, in response to the EPA's final disapproval of the previous South Coast VMT emissions offset demonstrations, CARB submitted revised South Coast VMT emissions offset demonstrations for the 1-hour ozone and 1997 8-hour ozone standards. CARB then provided supplemental information and analysis on April 3, 2014.

C. The EPA's Proposed Approval

As noted above, on May 23, 2014 (79 FR 29705), the EPA proposed approval of the revised South Coast VMT emissions offset demonstrations submitted by CARB to meet the CAA section 182(d)(1)(A) VMT emissions offset requirement for the 1-hour ozone and 1997 8-hour ozone standards in the South Coast. The EPA proposed to approve the revision because it demonstrated that California had put in place specific enforceable TCSs and TCMs to offset the growth in emissions from the growth in VMT and vehicle trips in the South Coast, and thereby met the applicable requirements in CAA section 182(d)(1)(A). In addition, based on our proposed

approval of the VMT emissions offset demonstrations, we issued an interim final determination that deferred the imposition of sanctions triggered by our March 28, 2013 disapproval of previous versions of the South Coast VMT emissions offset demonstrations. See 79 FR 29680 (May 23, 2014).

Our full evaluation of the revised South Coast VMT emissions offset demonstrations for the 1-hour ozone and 1997 8-hour ozone standards can be found in our May 23, 2014 proposed rule. In summary, the results from the State's VMT emissions offset calculations establish projected actual attainment-year VOC emissions of 65 tons per day (tpd) for the 1-hour standard demonstration and 62 tpd for the 1997 8-hour standard demonstration. The State then compared these projected actual emissions values against the attainment year scenario for no growth in VMT and trips and no additional TCMs or TCSs. This calculation is also referred to as the "VMT offset ceiling." By comparing the projected actual attainment year emissions against the VMT offset ceiling, the State (along with the EPA and the public) can determine whether additional TCMs or TCSs would need to be adopted and implemented in order to offset any increase in emissions due solely to VMT. Because the projected actual emissions in both the 1-hour standard demonstration and the 1997 8-hour standard demonstration are less than the corresponding VMT offset ceiling emissions, the State concluded that the demonstration shows compliance with the VMT emissions offset requirement and that there are sufficient adopted TCSs and TCMs to offset the growth in emissions from the growth in VMT in the South Coast for both the 1-hour and 1997 8-hour ozone standards.⁴

⁴ As described in the EPA's May 23, 2014 proposed rule, the offsetting VOC emissions reductions from the TCSs and TCMs put in place after the respective base year can be determined by subtracting the projected actual emissions estimates from the no action emissions estimates. For the purposes of the 1-hour ozone demonstration, the

Based on our review of the State's submittal, including the technical supplement, we found the State's analysis to be acceptable and agreed that the State had adopted sufficient TCSs and TCMs to offset the growth in emissions from growth in VMT and vehicle trips in the South Coast for the purposes of the 1-hour ozone and 1997 8-hour ozone standard. As such, we found that the revised South Coast VMT emissions offset demonstrations complied with the VMT emissions offset requirement in CAA section 182(d)(1)(A), and therefore, we proposed approval of the revised South Coast VMT emissions offset demonstrations for the 1-hour ozone and 1997 8-hour ozone standards as a revision to the California SIP.

II. What comments did the EPA receive on the proposed rule?

Our May 23, 2014 proposed rule provided for a 30-day comment period. During this period, we received one comment: an email from a private citizen representing the Public Solar Power Coalition (PSPC). We provide our response to this comment below.

Comment: PSPC, noting ongoing litigation over the 2012 South Coast Air Quality Management Plan, requests that sanctions be imposed on California and the District. PSCP also calls for adoption by SCAQMD of an Immediate Solar Conversion Plan as a control measure, with full implementation by 2020 at the latest, contending that that the Immediate Solar Conversion Plan is cost effective and represents RACT/RACM. PSPC also requested a 60-day extension of the comment period to allow more time to get the more recent information into the records.

offsetting emissions reductions, 423 tpd (488 tpd minus 65 tpd), exceed the growth in emissions from growth in VMT and vehicle trips, 176 tpd (488 tpd minus 312 tpd). See table 1 on page 29710 of our May 23, 2014 proposed rule. For the purposes of the 8-hour ozone demonstration, the offsetting emissions reductions, 53 tpd (115 tpd minus 62 tpd), exceed the growth in emissions from growth in VMT and vehicle trips, 26 tpd (115 tpd minus 89 tpd). See table 2 on page 29710 of our May 23, 2014 proposed rule.

Response: Our proposed rule relates to the South Coast VMT offset demonstration submitted by CARB as a revision to the California SIP to address the VMT-related requirements of CAA section 182(d)(1)(A) for the South Coast ozone nonattainment area for the 1-hour and 1997 8-hour ozone standards. Section 182(d)(1)(A) requires states to submit SIP revisions for such areas that identify and adopt specific TCSs and TCMs to offset any growth in emissions due to growth in VMT in such areas.

In our proposed rule, we concluded that, with the TCSs and TCMs put in place by the various relevant state and regional agencies, the required demonstrations have been made. PSPC does not challenge our conclusion but rather seeks to compel the state to adopt a specific additional control measure referred to by PSPC as the Immediate Solar Conversion Plan. However, the EPA's role in reviewing SIPs and SIP revisions is to ensure that the states meet the requirements of the CAA, and California has demonstrated how it meets the requirement without adoption and implementation of the Immediate Solar Power Conversion Plan. Therefore, we have no authority to require California to adopt and implement such a plan to comply with CAA section 182(d)(1)(A). Furthermore, because we have concluded that California has met the applicable requirements, sanctions would not be authorized under the CAA.

Lastly, we have decided not to extend the comment period because further information concerning the Immediate Solar Power Conversion Plan would not change our conclusion that California has submitted a SIP revision that meets the requirements of CAA section 182(d)(1)(A) for the South Coast and would not, therefore, provide a basis for us to reconsider our approval of the SIP revision under CAA section 110(k).

III. What action is the EPA taking?

Under CAA section 110(k)(3), for the reasons set forth above and in greater detail in the proposed rule, the EPA is approving CARB's submittal dated February 13, 2013 of the revised South Coast VMT emissions offset demonstrations⁵ for the 1-hour ozone and 1997 8-hour ozone standards, as supplemented by CARB on April 3, 2014, as a revision to the California SIP. We are approving this SIP revision because it demonstrates that California has put in place specific enforceable transportation control strategies and transportation control measures to offset the growth in emissions from the growth in VMT and vehicle trips in the South Coast for both the 1-hour ozone and 1997 8-hour ozone standards, and thereby meets the applicable requirements in section 182(d)(1)(A) of the Clean Air Act.

Upon the effective date of today's final approval, all sanctions and sanctions clocks that were triggered upon our final disapproval at 78 FR 18849 (March 28, 2013) of previous versions of the South Coast VMT emissions offset demonstrations, and deferred upon our interim final rule at 79 FR 29680 (May 23, 2014), are permanently terminated.

IV. Statutory and Executive Order Reviews

The Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves a state plan revision as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this final action:

- Is not a "significant regulatory action" subject to review by the Office of Management

⁵ Contained in the appendix VIII ("Vehicle Miles Traveled Emissions Offset Demonstration") of the SCAQMD's Final 2012 Air Quality Management Plan.

and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: August 13, 2014.

Jared Blumenfeld,
Regional Administrator,
EPA Region 9.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F — California

2. Section 52.220 is amended by adding paragraphs (c)(439)(ii)(A)(3) and (c)(439)(ii)(B)(4) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(439) * * *

(ii) * * *

(A) * * *

(3) Letter and enclosures from Lynn Terry, Deputy Executive Officer, California Air Resources Board, dated April 3, 2014, providing supplemental information related to Appendix VIII (“Vehicle Miles Traveled Emissions Offset Demonstration”) of the Final 2012 Air Quality Management Plan.

(B) * * *

(4) Appendix VIII (“Vehicle Miles Traveled Emissions Offset Demonstration”)(December 2012) of the Final 2012 Air Quality Management Plan.

